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California Public Utilities Commission
Consumer Protection and Protection Division
Transportation Licensing and Analysis Branch
505 Van Ness Avenue
San Francisco, CA 94102

Re: Protest to Uber Advice Letter 4A, Q2 of 2020, Rulemaking R. 19-02-012, Decision (D.) 20-03-007

Pursuant to General Order 96-B, Section 7.4 and Section 10.5, the San Francisco Municipal Transportation Agency, San Francisco County Transportation Authority, and San Francisco Mayor's Office on Disability (collectively "San Francisco"), submit this protest and objection to confidentiality against Uber Technologies Inc.'s ("Uber") Supplemental Advice Letter 4A requesting offsets in the TNC Access for All rulemaking, R. 19-02-012, including attachments ("Advice Letter").¹

I. Introduction

In accordance with General Order 96-B, Section 7.4.2(3) and (6), San Francisco protests Uber's Advice Letter on the grounds that: (1) pursuant to Section 7.4.2(6), the relief requested is unjust with the data that is available as Uber fails to demonstrate adequately the "presence and availability" of WAV service or an "improved level of service," including reasonable response times, and (2) pursuant to Section 7.4.2(3), although Uber has provided more data in this Advice Letter, it has continued to redact fund expenditure data provided in its offset request for hundreds of thousands dollar in public funds, creating material errors or omissions. San Francisco therefore must include in this protest an objection to Uber's claims of confidentiality pursuant to General Order 96-B, Section 10.5 for the redacted fund expenditure data because, under Commission Resolution ALJ-388, issued on November 16, 2020

¹ Uber submitted Supplemental Advice Letters 1A-4A in an unredacted format in response to Resolution ALJ-388, which rejected Uber's claims of confidentiality, aside from a limited confidentiality claim in Advice Letter 4A. Advice Letters 1A-4A are nearly identical in terms of supporting information and overall deficiencies, and San Francisco's protests are nearly the same as well.² See Uber Reply to Protests by SFMTA, SFCTA, and SFMOD to Uber AL 6.

(Resolution), Uber has again failed to meet its burden to prove that the redacted fund expenditure data qualifies as a trade secret, and there is no basis from which to withhold the data from disclosure.

Contrary to Uber's suggestions, San Francisco is not relitigating past policy decisions, and appreciates Uber's attempts to comply with the Act.² San Francisco simply requests that the CPED, as the Industry Division reviewing these requests, reject the offset requests as unjust and unreasonable because they fail to demonstrate that Uber has met any of the minimum requirements for an offset request under the Act and Decision 20-03-007 ("Track 2 Decision"). Uber's occasional record of reasonably prompt response times is entirely overshadowed by a consistent pattern of refusal of service to WAV users, indicating a significant failure to demonstrate presence and availability. Further, the level of service provided, including response times for trips requests that were fulfilled, did not demonstrably improve quarter over quarter (between Q1 and Q2 2020), and cannot justify the significant amounts Uber seeks to offset in each geographic area. Given the record, CPED cannot reasonably find that Uber has met the required statutory burden.

Alternatively, although Uber has provided its trip data as required, it continues to shield its expenditure data without meeting its burden of proof under Resolution ALJ-388. San Francisco requests that the CPED reject Uber's claims for confidentiality to redact this data and refer the matter to the Administrative Law Judge division. Shielding this data makes it impossible for the parties to assess whether Uber met the fourth element for an offset request, and therefore Uber should re-serve the unredacted Advice Letter on all parties, and CPED should provide a further opportunity to protest.

II. Uber's Advice Letter Contains Material Errors and Do Not Meet The Requirements for Award of Public Funds.

The California Legislature adopted the TNC Access for All Act ("Act") with the stated intent that wheelchair users who need WAVs "have prompt access to TNC services." (D. 1906033, Track 1 Issues Transportation Network Company Trip Fee and Geographic Areas ("Track 1 Decision"), p. 16.) The Act required the Commission to open a rulemaking, which it did in R. 19-02-012, and also establish the Access Fund to pay for the increased service. The Track 1 Decision held that the TNCs would gather funds by charging their customers a per-trip fee and remitting it into the Access Fund. (*Id.*, p. 10.) As relevant here, the Act requires the Commission to "authorize a TNC to offset against the amounts due...for a particular quarter the amounts spent by the TNC during that quarter to improve WAV service...for each geographic area" thereby reducing the amount of Access Funds. (Pub. Util. Code § 5440.5(a)(1)(B)(ii).)

The Act requires the Commission to reduce the amount of money a TNC is required to remit to the Access Fund if a TNC meets the following requirements: (1) presence and availability of drivers with WAVs, (2) improved level of service, including reasonable response times, (3) efforts to promote the service to the disability community, and (4) a full accounting of funds expended. (Pub. Util. Code § 5440.5(a)(1)(B)(ii).) Pursuant to the Track 2 Decision, to request an offset a TNC must submit an advice letter for review by the Industry Division, here CPED, demonstrating it has met the established requirements. Based on the information submitted in this Advice Letter, Uber

² See Uber Reply to Protests by SFMTA, SFCTA, and SFMOD to Uber AL 6.

failed to meet the minimum requirements, as set forth below, and the offset requests should be rejected.

A. Uber Has Not Demonstrated Presence and Availability.

To qualify for an offset, TNCs first must demonstrate both presence *and* availability of drivers with WAVs on its platform. While the Track 2 Decision did not adopt a specific methodology, it requires TNCs to demonstrate presence and availability of WAV vehicles by submitting data on WAVs in operation by quarter, hour and day of week and the number and percentage of trips completed, not accepted, cancelled by the passenger or the driver and passenger no-shows. (Track 2 Decision, p. 8.) The absence of a specified standard, however, does not and cannot mean that CPED can simply write the statutory requirement for a demonstration of presence and availability out of their analysis for offset eligibility. Mere submission of data does not “demonstrate” presence and availability. If that were the case, then any submission of data that showed zero WAVs anywhere in the entire state would satisfy this requirement to “demonstrate” presence and availability. Such an interpretation is plainly inconsistent with the intent of the statute and would render the statutory requirement for presence and availability a nullity.

Presence and availability is a key requirement, especially in the wake of the Commission’s Track 2 Decision, which found “[i]t is unnecessary to measure “response time” at a passenger’s initial trip request, in the event that there are subsequent cancellations, since the number of requests that are accepted, cancelled by passenger or driver, or cancelled due to passenger no-show will be captured in the ‘presence and availability’ data.” (Track 2 Decision, p. 20.) Consequently, “response times” are not reported for trip requests made by people with disabilities that went unfulfilled because a driver with a WAV was not present or available. This reporting makes the response time percentages look dramatically higher than they would if response times were measured in a way that reflected those occasions when a request for WAV service receives no response at all.

Given the inflated numbers in the response time metric, it is even more important that a demonstration of presence and availability under the Act must rest on an actual showing by the data. It is clear that during Q2 of 2020, WAV passengers continued to persistently experience unavailability or refusal of service—a key problem the Act was trying to fix. In fact, a large proportion of requests in Q2 of 2020 were not accepted or were cancelled by the driver.

Table 1 below clearly demonstrates the lack of availability and presence of TNCs in the counties for which Uber is requesting an offset request. This tables shows the number and percentage of WAV requests that are unfulfilled either because they were outright not accepted, or they were cancelled by the driver. In the counties for which Uber is requesting offsets, 36% of WAV ride requests were either not accepted or were declined by Uber. In a majority of these counties the percentage of WAV requests that are unfulfilled exceeded 68%.

Table 1. Percent of WAV Ride Requests NOT ACCEPTED or CANCELLED BY DRIVER for the Offset Request Counties

		NOT ACCEPTED OR CANCELLED BY DRIVER	% NOT ACCEPTED OR CANCELLED BY DRIVER
	REQUESTS		
ALAMEDA	1828	676	37%

CONTRA COSTA	232	157	68%
KERN	258	220	85%
LOS ANGELES	5179	1060	20%
MARIN	22	15	68%
ORANGE	566	445	79%
RIVERSIDE	304	245	81%
SAN FRANCISCO	281	159	57%
SAN JOAQUIN	101	74	73%
SAN MATEO	251	115	46%
SANTA CLARA	486	226	47%
STANISLAUS	54	39	72%
TOTAL	9562	3431	36%

A further measure of the presence and availability of WAV vehicles is the number and share of WAV requests that were actually completed. Table 2 shows that for the counties for which Uber is requesting offsets only 47% of WAV requests were completed. In three of the counties for which Uber is requesting offsets, they completed only a single WAV trip. In San Francisco County, only 26% of WAV ride requests were completed.

Table 2. Percent of WAV Ride Requests COMPLETED for the Offset Request Counties

	REQUESTS	COMPLETED	% COMPLETED
ALAMEDA	1828	968	53%
CONTRA COSTA	232	48	21%
KERN	258	1	0%
LOS ANGELES	5179	3016	58%
MARIN	22	2	9%
ORANGE	566	30	5%
RIVERSIDE	304	1	0%
SAN FRANCISCO	281	73	26%
SAN JOAQUIN	101	4	4%
SAN MATEO	251	105	42%
SANTA CLARA	486	207	43%
VENTURA	54	1	2%
TOTAL	9562	4456	47%

Finally, Uber continues to not report “Cancellations due to Passenger No Shows” at all claiming “there is insufficient reliable data to report.” San Francisco continues to find this claim dubious, as it is a standard practice for TNCs, including Uber, to charge riders a fee for canceling late, arriving late, or not showing up for a requested ride without canceling the ride request.

For these reasons, Uber’s unredacted data shows that its WAV service was not present and available to WAV passengers in Quarter 2 of 2020. Furthermore, Uber is requesting that it be reimbursed at per trip rates that are comparable to the cost of a first class cross-country flight. It would be unjust and unreasonable to award funds to Uber when it has not met the minimum

requirements of the Act. Uber’s data fails to demonstrate presence and availability as required under the Track 2 Decision, and CPED should reject its offset requests in the Advice Letter on this basis.

B. Uber Failed to Demonstrate Improved Level of Service, Including Adequate Response Times.

To show “improved level of service” for a given quarter and geographic area for the interim period, a TNC shall demonstrate it achieved either the Level 1 or Level 2 Offset Time Standard as set forth in the Track 2 Decision. (Track 2 Decision, p. 18.)³ However, to meet the improved level of service standard, a TNC must also demonstrate an improved level of service in each quarter for which offsets are requested. (*Ibid.*) In its offset request for Q2 2020, Uber claims to achieve the Level 2 Offset Time Standard for all trips but does not claim to meet the improved level of service standard quarter over quarter. We cannot adequately verify the Level 2 Offset Time Standard of 75th percentile because the Advice Letter data template only requires TNCs to report the 70th percentile and 80th percentile of response times, not the 75th percentile. For this reason, in Table 3 below, we summarize Response Times for the 50th percentile or Level 1 of trips in Q1 and Q2 of 2020. Since these response times are inflated by the “completed” response time metric, San Francisco cannot endorse full offsets in all of these counties. For example, if 100% of all trip requests were served within 30 minutes in San Francisco, we would not object to Uber receiving its due offsets. However, Uber only completed 26% of requests in San Francisco, which makes the achieved response time benchmark meaningless to most riders and raises questions about the cost-effectiveness of the public funds requested for having supposedly *improved* service.

Finally, Uber’s Advice Letter suggest that the Commission and CPED should consider measures other than response times, such as whether the number of complaints decreased.⁴ While complaints are an important consideration, the sheer volume from quarter to quarter or year to year are not an objective measure on their own, and a simple reduction in volume is not basis for granting an offset. For these reasons, CPED should reject the offset request on this additional ground.

Table 3. Level 1 Response Times for Completed Trips

	Completed Trips Q2	Level 1 Benchmark (50%)	Q1 2020 Response Time in Minutes (50 th %)	Q2 2020 Response Time in Minutes (50 th %)
ALAMEDA	968	25	13.88	14.45
CONTRA COSTA	48	25	17.08	17.22
KERN	1	30	N/A	10.68
LOS ANGELES	3016	25	9.42	13.73
MARIN	2	30	20.55	25.67
ORANGE	30	25	10.4	10.15
RIVERSIDE	1	30	8.22	14.17
SAN FRANCISCO	73	15	17.47	17.78
SAN JOAQUIN	4	25	3.93	13.22

³ The Track 2 Decision suggests that improvements should be measured in minutes and requires that TNCs provide this response time data on the template tab titled “Offset Response Times.”

⁴ See AL 4A, Q2 2020, p. 6.

SAN MATEO	105	25	16.1	15.08
SANTA CLARA	207	25	16.53	15.58
VENTURA	1	25	N/A	21.38

C. Uber Failed to Demonstrate Adequate Efforts to Promote to the Disability Community.

The third element required for TNCs to meet the offset requirements is to demonstrate outreach efforts undertaken to publicize and promote available WAV services to disability communities. (Pub. Util. Code § 5440.5 (a)(1)(B)(ii).) Again, while the Track 2 Decision does not specify a methodology for evaluating outreach efforts, the mere submission of any evidence at all cannot be sufficient to warrant expenditure of public funds. San Francisco urges staff to consult members of the disability community, particularly the Disability Advocates party to this proceeding, who are best suited to assess whether Uber makes a compelling case in this arena.

D. Uber’s Unredacted Data Essentially Contains No Accounting of Funds Expended and Does Not Demonstrate Improvements Due to Investments in WAV Service.

The Act allows TNCs to offset the amounts spent by the TNC during a quarter to *improve* WAV service (emphasis added). Under the fourth element required to be awarded an offset, a TNC must provide a “full accounting of funds,” as well as demonstrate that an improved level of service, including reasonable response times, is due to *investments for WAV service* compared to the previous quarter. (Track 2 Decision, pp. 25-26 (emph. added).)

The only information available in the Advice Letter regarding funds expended is the total amount which Uber seeks to offset in each county. Offsets are payments of monies collected from all TNC trips in each county to TNCs for improving WAV service in that county. Table 4 shows that a basic metric of the cost-effectiveness of TNC efforts to improve WAV service, which is the average offset request per completed TNC trip. This table shows that Uber is requesting that it be paid from public monies \$1,250 per completed WAV trip, significantly more than the company has requested in any previous offset request. As in previous quarters, for some counties Uber appears to be applying some sort of per-WAV-trip rate to calculate these payments of public money to Uber as a few counties appear to have the exact same reimbursement rates per completed trip - \$1,253.99 per trip.

Table 4. Average offset request per COMPLETED TNC trip for the Offset Request Counties

	COMPLETED	OFFSET REQUEST	OFFSET REQUEST PER TRIP
MARIN	2	\$2,507.97	\$1,253.99
SAN JOAQUIN	4	\$5,015.94	\$1,253.99
VENTURA	1	\$1,253.98	\$1,253.99
SAN FRANCISCO	73	\$89,046.52	\$1,219.82
KERN	1	\$716.28	\$716.28
RIVERSIDE	1	\$716.28	\$716.28
ORANGE	30	\$21,488.29	\$716.28
CONTRA COSTA	48	\$24,426.00	\$508.88

SAN MATEO	105	\$34,735.80	\$330.82
SANTA CLARA	207	\$43,305.80	\$209.21
LOS ANGELES	3016	\$557,936.20	\$184.99
ALAMEDA	968	\$62,156.00	\$64.21

Due to Uber’s redaction on Expenditure Data, which as discussed below is unwarranted, it is unclear what costs Uber incurred providing WAV service and there is no showing whether these investments improved WAV service. For these reasons, CPED should reject the offset request on this additional ground.

III. Resolution ALJ-388 Rejected Uber’s Claims of Confidentiality Regarding Fund Expended Data, and Uber Has Again Failed to Meet its Burden.

Based on prior disputes over confidentiality over Uber’s Advice Letters 1-3, the Commission issued Resolution ALJ-388 on November 16, 2020, flatly rejecting all of Uber’s claims. The Resolution noted that GO 66-D sets forth the requirements that a person must comply with in requesting confidential treatment of information submitted to the Commission and that GO 96-B provides further rules concerning disclosure of information obtained through the Advice Letter process, which are consistent with the constitutional and statutory requirements applicable to disclosure of government records. (Resolution, p. 4.)

The Resolution also noted that in the Track 2 Decision, the Commission stated that a parallel decision to be adopted in Rulemaking (R.) 12-12-011 “shall govern confidentiality as it relates to information submitted pursuant to SB 1376.” (*Id.*, citing Track 2 Decision, p. 43.) D. 20-03-014, the parallel decision, made clear that a person submitting information to the Commission must satisfy the requirements of GO 66-D. (*Id.*, citing D. 20-03-14, p. 23.) The Track 2 Decision also designated that the General Rules of the GO 96-B Advice Letter process, with limited modifications, shall apply to Offset Requests. (Track 2, pp. 37-38.) As such, Rule 10 of GO 96-B governs the analysis here.

Rule 10.1 of GO 96-B states that “[b]ecause matters governed by this General Order are informal, it is rarely appropriate to seek confidential treatment of information submitted in the first instance in the advice letter process.” Rule 10.2 provides that “[a] person requesting confidential treatment under this General Order bears the burden of proving why any particular document, or portion of a document, must or should be withheld from public disclosure.”

Rule 10.3(d) and (e) require a person seeking confidential treatment to: “Identify any specific provision of state or federal law, or Commission decision, the person believes prohibits disclosure of the information for which it seeks confidential treatment and explain in detail the applicability of the law or decision to that information.” It also requires to “Identify any specific privilege, if any, the person believes it holds and may assert to prevent disclosure of information and explain in detail the applicability of that law to the information for which confidential treatment is requested. Accordingly, Uber bears the burden of proving that the information at issue in their Offset Requests satisfy Rule 10’s pleading and substantive requirements. (Resolution, p. 5.)

Against this backdrop, the public policy interests must be kept at the forefront. As noted in the Resolution, the Act requires the Commission to submit a report to the Legislature “on compliance with the section and on the effectiveness of the on-demand transportation programs or partnerships funded pursuant to this section.” The required report underscores the Legislature’s public interest intent in understanding the effectiveness of the TNC WAV programs, as well as the capabilities and the

challenges of providing on-demand WAV access. (Resolution, pp. 22-23.) In addition, the purpose of the required data submissions in the offset requests is to ensure that the public Access Funds are being used on expenditures that improve WAV service. Of particular importance, the data here is being provided for reimbursement of public funds collected from every California passenger. Uber is seeking hundreds of thousands in offsets of public funds for this Advice Letter alone, but then incredibly, also is attempting to shield how it expended the funds and whether they indeed improved WAV service from parties to this rulemaking on the unsupported premise that this data for which it seeks reimbursement in and of itself is economically valuable. This twisted logic turns the purposes of the Act and the California Public Records Act on its head. More importantly, the redactions make it impossible for the parties to this proceeding to assess whether Uber has met the Commission's minimum requirements on funds expenditures for offsets as set forth in its Track 2 Decision.

IV. Uber Once Again Has Failed to Meet Its Burden To Establish the Expenditure Data is a Trade Secret.

While Uber has redacted less data here than in past Advice Letters, it still must meet its burden to prove the data qualifies for statutory protection. Uber claims that San Francisco is objecting to its claims of confidentiality as a guise to make an unwarranted policy argument. But this is incorrect. San Francisco will stop objecting to Uber's claims of confidentiality once Uber meets its burden to show it is entitled to protection under the governing standards. Yet, even with the benefit of the Resolution, which provides specific guidance on this issue, Uber continues to fail to do so.

Uber's claims of confidentiality in its Advice Letter involve three areas of redacted expenditure data in the AL spreadsheets: (1) Fund Expended tab, Column Q – Transportation Service Partner Fees/Incentives and/or Management Fees, Column U – Consultants/Legal, Column Y - Total Partnership Costs, and Column BD Total Expended; (2) Fund Certification tab, Partnership Costs, which encompasses the aggregated information in the Fund Expended tab; and (3) Contact Information tab, which includes the amount of contract expenses per quarter. Uber also redacted the aggregated total of funds sought in its Cover Letter. Uber asserts that all the redacted data ("Expenditure Data") reflects commercially sensitive and highly confidential contractual pricing terms that qualify as trade secrets under 18 U.S.C. § 1832, Cal. Civil Code § 3426 et seq., and Evidence Code § 1060, the disclosure of which would reveal valuable information. (See Uber AL 4A, Declaration of Confidentiality Pursuant to General Order 96-B, Section 10.3 on behalf of Uber Technologies, Inc. Regarding Advice Letter 4A, ¶3 ("Uber Declaration").)

Uber continues to ignore the strong public interest and need for parties to review this data. The Act requires a breakdown of funds, echoed by the Commission in the Track 2 Decision, reflecting the need to make sure that public dollars collected to improve WAV access are being spent appropriately. To demonstrate a full accounting of funds expended, the fourth required element of an offset request, a TNC shall submit: (1) a completed Appendix A with sufficient detail to verify how the funds were expended and with the amount expended for each item, and (2) a certification attesting to the accuracy of its accounting practices. (Track 2 Decision, pp. 25-26.) A TNC seeking an offset for a contractual arrangement with a WAV provider must identify the parties to the contract, the duration of and amount spent on the contract, and how the amount was determined. (*Ibid.*) Without being able to see the breakdown of funds, as noted above, it is impossible for parties to assess whether Uber meets this requirement.

"Trade secret" is defined in California Civil (Civ.) Code § 3426.1(d) as "information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (1) Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and (2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy." (Resolution, pp. 5-6; Civ. Code § 3426.)

Uber's claims still fall short of the specificity required to meet their burden to establish that the Expenditure Data constitutes trade secrets under the Resolution.

In accordance with Section 10.5 of General Order 96-B, San Francisco met and conferred with Uber, but the parties were unable to resolve San Francisco's objections to its claims of confidentiality informally. As part of the meet and confer, Uber offered to release the redacted data if San Francisco executed a non-disclosure agreement. Because, as detailed below and in the objections to Advice Letters 1-4, Uber still has failed to meet its burden to show that the redacted information in the Advice Letter (or any of its previous Advice Letters 1-4) is subject to exemption under the California Public Records Act or San Francisco Sunshine Ordinance, San Francisco is not able to enter into a non-disclosure agreement.

A. Uber Failed to Establish That the Expenditure Data Is Business Information

The Resolution held that Uber failed to demonstrate how any of the categories it redacted in Advice Letters 1-3, including the Expenditure Data listed above, contained "information, including a formula, pattern, compilation, program, device, method, technique, or process," under Civ. Code § 3426.1(d). (Resolution, pp. 8-9.)

Uber's attempt to remedy this deficiency fails. Uber claims that the redacted information "constitutes 'business information (such as financial information, cost and pricing, manufacturing information . . .)' that Uber has 'created, on its own, to further its business interests.'" (Uber Declaration, ¶4(a), citing Resolution, p. 7.) But of the examples cited, Uber is only seeking to protect "cost" information, in the form of third-party provider fees, consultant/legal fees, and contract fees for WAV service. Moreover, even Uber does not affirmatively state that the information constitutes a trade secret. Rather the declaration and the single case cited state that cost information "can constitute a trade secret protected from disclosure" citing for example *Whyte v. Schlage Lock Co.*, 101 Cal. App. 4th 1443, 1455 (2002). (Uber Declaration, ¶4(b)(emph. added).)

Notably, *Whyte*, the only authority cited, only discusses pricing and profit margins, and not cost information. Indeed, the case goes on to state that "pricing and bidding methods [are] not trade secrets if only general methods of doing business." (*Whyte*, 101 Cal.App.4th, at 1455.) Additionally, *Whyte* involved "specific products (locks) sold to specific customers (The Home Depot and other 'big box' retailers, such as Lowe's and Sears), which made the putative pricing trade secrets specific and articulable." (*See Mitigation Techs., Inc. v. Pennartz*, 2015 WL 12656936, at *6 (C.D. Cal. Mar. 13, 2015).) However, here, Uber simply concludes that the cost information is protectable, with no context of how that information is relevant or related to its products or business model. (*See id.*) Therefore, Uber has failed to meet its burden to demonstrate that the Expenditure Data is "business information," as required, again failing to satisfy Rule 10.3's threshold pleading requirement to "explain in detail the applicability of the law or decision to that information."

B. Uber Failed to Establish that the Expenditure Data Derives Independent Economic Value and Is Not Generally Known.

Next, Uber claims that the Expenditure Data, which is nothing more than costs to third party partners and vendors, constitutes economically valuable information that is generally not known to the public. (Uber Declaration, ¶3(b).) The Resolution rejected this claim. With respect to the "funds expended" category and certification, the Resolution stated that "D.20-03-007 requires the costs to be aggregated and grouped into 20 broad categories, such as 'transportation service partner fees /

incentives / management fees,’ ‘marketing costs,’ or ‘training costs.’” (Resolution, p. 11.) Uber claims that “[d]isclosure of the redacted granular expense information would cause material economic harm to Uber by enriching competitors who gain access to information about Uber’s payments to third parties.” (Uber Declaration, ¶3(c).)

The Resolution disagreed, stating “[w]e cannot see how the fund amounts would reveal competitively harmful information, if disclosed. For example, the total amount...Uber expended on ‘transportation service partner fees/incentives/management fees’ is an aggregated amount, and does not differentiate hourly rates or specific pricing information that could be of use to a competitor.” (Resolution, p. 11.) The same holds true for Uber’s “consultants/legal” fees. And the other redacted information, “total partnership costs” in Column Y and “total expended” in Column BD are merely totals of the “transportation service partner” fees and the “consultant/legal” aggregated by county and quarter, so there is nothing competitively harmful in that data either.

Uber does not address the Resolution’s ruling. Rather, the only response it provides is that “the fees charged by third party WAV providers for each ride taken on the platform...can be easily discerned by Uber’s competitors using other publicly available information.” (Uber Declaration, ¶3(c).) Uber claims that “competitors who have access to publicly disclosed information regarding the total number of WAV trips taken on the platform in Los Angeles County during a quarter could use straightforward arithmetic to divide the total fees paid to Uber’s transportation service partner in Los Angeles County to deduce the cost to Uber per ride using the third-party service provider.” (Uber Declaration, ¶3(c).)

But this example, if true, rests on many assumptions, which Uber has not substantiated. First, it assumes that all Uber’s WAV trips are through third party vendors. Second, it assumes that Uber uses a per trip fee structure for each third-party provider agreement. And if Uber does use that fee structure, this disclosure runs counter to its argument that the terms of its contracts need to be kept private as it voluntarily disclosed it in the Advice Letter. On the other hand, if this is not the fee structure, then the example is meaningless. Third, it also assumes that only trips completed require third party expenditures, which does not make sense, as the offset inquiry requires that Uber also show rides requested, and canceled. Given all these loose threads, Uber’s example, even if true, is incomplete and fails to provide any discernable insight into the value of Uber’s third-party payments. Moreover, this example sheds no light on how a competitor could discern what the aggregated “consultant/legal” fees are in the aggregated amounts. Surely, those contract terms are not based on a fee per trip model, but Uber is silent on this point.

Similarly, with regard to contractual payments, Uber states that “[c]ompetitors could also seek to undercut Uber’s contractual terms with its third-party WAV partners by, for example, seeking out better contract terms with those same partners.” (Uber Declaration, ¶3(d).) But Uber is not required to provide contractual terms, and is only required to provide aggregate contractual cost per county per quarter. The Resolution already rejected this claim:

Uber’s assertion is that if disclosed, unnamed competitors could use Uber’s data to “determine supply, demand, insight into resources, and gain an unfair competitive advantage” and “inhibit competition.” For its third-party WAV payment information (Category i), Uber asserts that this data could give competitors an “unfair business advantage” and “pose potential negative impacts and/or harm” on Uber’s partners...the funds expended and third-party WAV payment data contain aggregated totals and do not reveal granular information, such as hourly rates or pricing information, that could be of use to a competitor. (Resolution, pp. 14-15.)

Moreover, Uber's examples of why disclosing contract fees is potentially harmful are inconsistent. In Section 3(d) of its declaration, Uber fears its unnamed competitors will get a better deal than Uber by seeing this aggregated information. And in Section 3(e), Uber claims that third-party WAV partners could use this contract pricing information to identify opportunities to raise their prices. But this makes no sense as the contractors already know their own pricing so how will redacting it from the public make a difference? Uber also fails to point out that providing the information may actually lead to competition among contractors that would benefit Uber and WAV riders. Uber has once again failed to provide the required specificity as to how third-party contract information, which is still aggregated by county by quarter, has independent economic value.

Finally, with regard to the redacted figure in the cover letter, the Resolution again flatly rejected that this could be a trade secret: “[t]hat figure is an aggregated amount of all payments made to third-party partners for that quarter in all counties.... because that figure is an aggregated number, and does not differentiate hourly rate or pricing information, we are not persuaded that third-party WAV providers could extrapolate competitive pricing information.” (Resolution, p. 12.) Uber's Advice Letter offers nothing more on this point, and thus, it once again failed to prove the aggregate cover letter amount is a “trade secret.”

Uber also concedes that it has provided this very same information it seeks to keep confidential here for its Advice Letters 1 and 2, and in its Supplemental Advice Letters 1A-3A. Therefore, it has failed to demonstrate that the redacted Expenditure Data is not generally known to the public. (Uber Declaration, ¶4(c).) Although Uber claims that it did not provide this quarter's data to the public, its prior disclosure undercuts its claim that this information is particularly valuable to Uber during the early stage development of the WAV program by virtue of the fact that it disclosed this information to the public. (*Id.*) Moreover, Lyft also provided this data in its Supplemental Advice Letters 1A-4A further undermining Uber's claim that it is considered competitive trade secret data between the TNCs.

In conclusion, while Uber has narrowed its redactions to Expenditure Data, and added some vague examples why they have independent economic value, it has provided nothing that would alter the Commission's rejection of Uber's claims of confidentiality under the Resolution:

Uber's conclusory assertions that all of the “funds expended” categories constitute trade secrets fails to satisfy their respective burdens to prove with particular facts that such information meets the definition of a trade secret. Based on the limited explanation provided in their declarations, as well as the lack of facts identifying the boundaries of their trade secret assertions, we find no basis for withholding any of the “funds expended” amounts, pursuant to Civ. Code § 3426.1(d). (Resolution, p. 12.)

Uber once again has failed to satisfy its burden under Rule 10.3 to explain in detail how the Expenditure Data derives independent economic value from not being generally known to the public or to other persons who can obtain economic value from its disclosure. (*See id.*, at 14.)

V. Conclusion

In sum, Uber's offset request in Supplemental Advice Letter 4A fails on multiple grounds and should be rejected. First, Uber has failed to meet the threshold requirements for offsets in the Act and Track 2 Decision. Uber's data does not show there is “presence and availability,” “improved levels” of WAV service, or adequate outreach to the disability community to meet the Act's requirements. Further, Uber's extremely high costs per trip raise concerns about whether it is meeting the Act's requirements. Second, Uber's claims of confidentiality fail under the requirements of the Resolution and governing

orders. Although Uber has redacted less data here, it continues to fail to meet its burden to establish the Expenditure Data constitutes a trade secret. Therefore, the CPED should find the claims unwarranted and refer the matter of confidentiality once again to the Administrative Law Judge Division. Uber should be required to re-serve the unredacted Advice Letter, and the CPED should continue or reopen the protest period to allow the parties additional time to submit supplemental protests after they are able to review Uber's material omissions. For the reasons stated herein, San Francisco requests that the Advice Letter is rejected outright as CPED cannot reasonably find that Uber has met the required statutory burden.

Sincerely,

By: _____ /s/
Tilly Chang
Executive Director
San Francisco County Transportation Authority

By: _____ /s/
Jeffrey Tumlin
Director of Transportation
San Francisco Municipal Transportation Agency

By: _____ /s/
Nicole Bohn
Director
San Francisco Mayor's Office on Disability

cc: Adam Bierman, westregs@uber.com